IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 594 of 2001
With
SPECIAL CIVIL APPLICATION No. 596 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHETH PJR VORA TECHNICAL INSTITUTE - Petitioner(s)

Versus

VIJAYKUMAR BHOGILAL GORKHIA - Respondent(s)

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Appearance :
MR BJ TRIVEDI for Petitioner(s) : 1,MR JT TRIVEDI for Petitioner(s) : 1,
MR MB PARIKH for Respondent(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 07/10/2005

ORAL JUDGMENT

1.In these petitions, the petitioner-employer has challenged the Orders passed by the Competent Authority under the provisions of payment of Gratuity Act as upheld by the appellate authority under the said Act.

Short question is whether the respondents could have received the gratuity under the Payment of Gratuity Act. It is not in dispute that the respective respondents were engaged as IIT Instructors imparting education for the petitioner Institute. Thus, it is not seriously in dispute that both the employees were engaged in teaching activities. Learned Advocate for the petitioner pointed out that by virtue of the full bench decision in the case of **Shantiben L. Christian Vs. Administrative Officer, Ahmedabad Municipal School Board reported in 2001(2) GLR 1626 as well as another full bench decision in the case of Principal, Shri Jivkor Vanita Vishram Vs. Savita Saymon Parmar reported in 2004(2) GLR 1593** and the decision of the **Hon'ble Supreme Court in the case of Ahmedabad Pvt. Primary Teachers' Association Vs. Administrative Officer & Ors. reported in 2004(1) SCC 755**, it is concluded that though, payment of Gratuity Act would apply to teaching institutions, teachers are not covered by the term 'employee' as defined under the Act and would therefore not be entitled to receive gratuity. On the other hand, learned Advocate Shri Parekh, appearing for the employees strongly contended that the respondents were engaged as instructors and the ratio of the above mentioned decisions would not apply to the facts of

their case.

2. In the Orders passed by the authorities below also, there is a mention that teachers are entitled to receive gratuity. Even otherwise, it is not in dispute that respondents were engaged in activities of imparting education. By whatever name called, they were part of teaching staff. In that view of the matter and in view of the concluded legal position, the respondents will not be entitled to receive gratuity.

3. These petitions are therefore required to be allowed and are hereby allowed. Orders passed by the Controlling Authority and the Appellate Authority qua these respondents are set aside.

4. Rule made absolute. Since the petitions are being allowed, the amounts deposited by the petitioners with the Controlling Authority shall be returned to the authority with accrued interest.

(AKIL KURESHI, J.)

**bjoy*